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## BOOK REVIEWS.

BRITTON: AN ENGLISH TRANSLATION AND NOTES. By Francis Morgan Nichols. With an Introduction by Simeon E. Baldwin, LL. D. Washington: John Byrne & Co. 1901. pp. xxvii, 649.

It was a happy thought to publish in convenient and inexpensive form the authoritative hand-books of our early law. Glanville, in Beames' excellent translation, has already been given to the profession, and Littleton and The Mirrour are to follow at proper intervals. It is to be hoped that the most important and influential of them all, Bracton's great work, will also find a place in the list.

The only new thing about the volume under consideration being the introduction by Judge Baldwin, the task of the reviewer is a simple one. The merits of Nichols' translation, first published in 1865, are too well known to require extended comment. The fruit of an elaborate and scholarly rescension of the text, it is not only a faithful and accurate "Englishing" of the original treatise, but is singularly free from those infelicities of expression and awkward turns of phrase to which the Norman-French of the 13th century too easily tempts the unwary translator. In all of these respects, as well as in the scholarship displayed in the reading of the original, it is vastly superior to the only other English translation, that of Robert Kelham, a small portion of which only was published about a century earlier. The present edition is a faithful reprint of the translation of 1865, even to Nichols' notes and the elaborate and careful index. For the purposes of the present issue the publisher was probably justified in omitting the French text, as well as the elaborate critical apparatus with which it was accompanied in the original edition, but it was surely an error of judgment to omit all the notes referring to Britton's sources of information, and showing in minute detail the derivation of the work. These notes, derived from the labors of Kelham, and from the learned commentary attributed to Britton's contemporary, John de Longueville, as well as from the researches of the editor himself, should be particularly useful to the law student, for whom this work is primarily intended.

For the introduction of Judge Baldwin, little need be said, excepting that it is adequate to its modest purpose—well-informed, gracefully written and sufficiently learned. It is, however, a matter of regret that it did not fall within the plan of the publisher to reprint the more elaborate and learned introduction of Mr. Nichols—by reason of its fulness, its reasonableness and nicely balanced judgment, a most satisfactory piece of work. It would be interesting to get Judge Baldwin's grounds for his dissent from Mr. Nichols' conclusion that "Britton" is a legal fiction—one of the many variant spellings of the great name which we have corrupted into Bracton (known to his contemporaries as Bratton, Bretton, Bretoun or Britton), and that the treatise was the work of an obscure clerk who

concealed his anonymity behind the gigantic shadow of the greater writer. Bracton's name was one to conjure with in the centuries before Littleton, and we know that his work furnished the inspiration as well as the material for more than one lesser writer. Judge Baldwin's conclusion that the book, Britton, was probably the work of Sir John le Breton, a justice of Edward I's Inquisitorial Court of Trailbaston, may, indeed, be true, but it is hardly justified by any facts recited by him. Indeed, the lack of any trustworthy evidence concerning the authorship of the treatise seems rather to point to the conclusion reached by Nichols.

Judge Baldwin's introduction calls attention to some of the curiosities of the law recorded by Britton, but omits to refer to the most curious of all its provisions, namely, the enumeration under the head of "*Larcyns*," along with crimes of violence, of the practice of enchantment by putting people to sleep (*de enchaunterie si come de ceur q̃ endorment la gent*. Bk. I, 24). Whether this indicates that hypnotic influence was known and dreaded as early as the 13th century, or whether the reference is to the use of drugs (in modern parlance, "knock-outd rops"), it is equally curious and interesting.

It is no reproach to Judge Baldwin that he has left us as much in the dark as ever on the vexed question of the relations of Edward I to this work. Is Britton a true code, of the Justinian order, promulgated as a royal "constitution", and so having the force and effect of legislative enactment? Or is it a *pseudo* code, prepared by authority of the king, and deriving a certain weight and sanction from its august origin? Or, again, is it a mere compilation and arrangement of the law, a text-book, written by an obscure lawyer, who sought to gain credit for his work by the literary device of speaking in the royal name. To the writer of this review, the last supposition seems the most probable, though both Judge Baldwin and Mr. Nichols concur with Dr. Brunner (in the *Encyklopædie der Rechtswissenschaft*) in attributing to the work a royal sanction. The fact that it purports to speak in the voice of the King, who is made to "will and command" that the laws set down shall "be so used and observed at all points" "throughout England and Ireland" is, of course, far from conclusive on the point under consideration, while the general esteem in which the work has been held by the legal profession—as a little higher than Fleta and a little lower than Bracton—would seem to render doubtful its unique claim to the possession of a commanding authority. But if, as Judge Baldwin believes, it have such authority, it is hardly open to criticism for its "steady endeavor to guard and magnify the royal prerogative" and for assuming a less "manly" and independent tone than that employed by Bracton, who spoke not as one having authority but as one of the scribes of the law.

But whatever the source and nature of its authority, the work before us is no mere abridgment or compilation drawn from the stores of Bracton's learning, but an independent treatise on the law of its time, full of interest and value, and to be heartily commended to all serious students of our legal system. It remains

only to say that the form of the book—in size, typography and accuracy of proof-reading—leaves little to be desired.

HANDBOOK OF ADMIRALTY LAW. By Robert M. Hughes. St. Paul: West Publishing Co. 1901. pp. xxvii, 503.

This is another volume in the Hornbook Series, which seems to have proved its usefulness by the continuance of its publications. The author is a son of the sometime United States District Judge for the eastern district of Virginia, and is himself a practitioner at the admiralty bar at Norfolk. The basis of the work is stated to be a series of lectures given to the students of the Washington and Lee University during the past few years. In the preface the author remarks the scant attention given in the law schools to the subject, despite its constantly increasing importance, and suggests that the lack of a text book is probably the explanation of the neglect. Whether or not by supplying this lack the author's evident hope will be fulfilled, it is difficult to say. There is no doubt, however, of the fact that a knowledge of general admiralty principles has hitherto been a matter of acquirement subsequent to the law school instruction. Of the three leading law schools in the country, Yale and Harvard only have introduced a course on admiralty and that within the last two or three years. Columbia has yet to take this inevitable and much needed step.

As to the present volume, it is compiled on the now familiar system of the Hornbook series, consisting of short statements throughout the work of general principles in black letters, always more or less a blemish to a well-set-up page, accompanied by a sometimes extended commentary and notes. The latter in this instance include most of the leading cases in admiralty decided in the courts of this country. It is a matter of regret, however, that fuller reference has not been made to the English decisions which, in many instances, have furnished to us the most carefully considered reasoning on many parts of this interesting topic that the books contain. The book is admittedly elementary in its scope, and on that account the author does not hope that the specialist will find anything novel in treatment, except possibly of such topics as damages for injuries resulting in death, or damages generally. But even here, if the simile be pardoned, the author does not seem to be treading on virgin soil. Except for the long-established principle that allows apportionment of damages among two or more blame-worthy parties, and the principle that contributory negligence, in personal injury cases, does not altogether preclude recovery, it is not believed that the general theory of damages in admiralty differs at all from that at the common law.

Besides the discussion of the various principles, the author has added a short chapter on pleading and practice, and has included in the appendix the mariner's compass, which probably few admiralty lawyers can box, the international rules, the inland rules, the lake rules, and others of local application, and the general admiralty rules of practice. Altogether, the book should prove extremely useful and should fill a long-felt want.